

REMARKS

Claims 1-65 were pending in the present application. The Examiner has withdrawn claims 27-41 and 62 from consideration as being drawn to non-elected subject matter. By this Amendment, Applicants have canceled claims 22, 24, 27-41, and 58-65 without prejudice to the right to pursue the canceled subject matter in a future continuing application. Applicants also have amended claims 1, 19, 42, 45, 48, and 49. The present Amendment does not introduce any new matter and thus, its entry is respectfully requested. Upon entry of the present Amendment, claims 1-21, 23, 25-26, and 42-57 will be pending and under examination.

The February 24, 2006 Office Action

In the February 24, 2006 Office Action, the Examiner indicated that the previous restriction requirement was deemed final, that claims 27-41 and 62 were being withdrawn from consideration, and that claims 1-26, 42-61, and 63-65, including SEQ ID NO: 1 encoding SEQ ID NO: 2 would be examined.

Examiner's objection to the specification

The specification was objected to because, in the Examiner's opinion, the drawings were not referred to properly. The Examiner stated, for example, that if the drawings show Figures 1A -1H, then the Brief Description of the Drawings should recite "Figures 1A-1H", instead of "Figure 1".

In response, Applicants have amended the specification to address the Examiner's

concerns. Accordingly, Applicants respectfully request reconsideration and withdrawal of the objection to the specification.

Examiner's objection to the claims

The Examiner objected to claims 1, 42, 45, 49, 63, and 64 for being drawn to non-elected subject matter. In response, to expedite allowance of the application, Applicants have amended claims 1, 42, 45, and 49 by deleting reference to the non-elected embodiments, namely the antisense sequences. Applicants also have canceled claims 63 and 64. The cancellation of this subject matter has been made without prejudice to Applicants' right to pursue the canceled subject matter in a future continuing application. Applicants believe the Examiner's concerns have been addressed and thus, respectfully request reconsideration and withdrawal of the claim objections.

Examiner's claim rejections under 35 U.S.C. §112, second paragraph

Claims 19, 22, 24, and 58-59 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Specifically, claim 19 was rejected for containing a minor typographical error (i.e, for reciting "in the in a"). Applicants have corrected this error by this Amendment. Claims 22 and 24 were rejected in their recitation of "wherein the increase in seed number is about 20%" and "wherein the increase in cell number is about 30%" because, in the Examiner's view, the claims lack a comparative basis. Claims 58 and 59 were rejected for their recitation of "ANT" and "AXR1." The Examiner has asserted that the designation of these sequences is arbitrary and ambiguous, and has suggested amending the claims to refer to a

specific SEQ ID NO for each of these sequences.

In response, Applicants do not agree that the claims as written are indefinite. Nevertheless, to expedite allowance of the application, Applicants have canceled claims 22, 24, 58 and 59 without prejudice, thus rendering the rejection moot. Applicants therefore respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. §112, second paragraph.

Examiner's claim rejections under 35 U.S.C. §112, first paragraph

Claims 60-61 and 63-65 were rejected under 35 U.S.C. §112, first paragraph as allegedly lacking both adequate written description and full enablement. The Examiner's rationale is set forth in detail at pages 4-10 of the Office Action. In short, the Examiner contends that no sequences having 50% homology to the recited sequences have been described and, given the inability in the art to reasonably predict which nucleic acids would be 50% homologous and still encode a protein with the same activity as a protein encoded by SEQ ID NO: 1, such sequences are not enabled. The Examiner has indicated that claims encompassing nucleic acids (and related methods) comprising nucleotide sequences that encode the amino acid sequence of SEQ ID NO: 2 have been deemed allowable (if amended to delete reference to antisense sequences).

In response, without conceding the correctness of the Examiner's position, but to expedite allowance of the subject application, Applicants have canceled claims 60-61 and 63-65 without prejudice, thus rendering the Examiner's rejection of these claims moot. Applicants therefore respectfully request reconsideration and withdrawal of the Examiner's rejections under 35 U.S.C. §112, first paragraph.

Examiner's rejection under 35 U.S.C. §102(b)

The Examiner rejected claim 60 under 35 U.S.C. §102, as allegedly being anticipated by Chen, et al (Sept. 1999, NCBI Accession number AI998680, enclosed). According to the Examiner, Chen discloses a nucleic acid sequence having 72% sequence identity to Applicants' SEQ ID NO: 1.

In response, without conceding the correctness of the Examiner's position, but to expedite allowance of the subject application, Applicants have canceled claim 60 without prejudice, thus rendering the rejection moot. Applicants therefore respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b).

Examiner's rejection under 35 U.S.C. §101

The Examiner rejected claims 48 and 65 under 35 U.S.C. §101, alleging that the claims are directed to non-statutory subject matter. Essentially, the Examiner has taken the position that the claims as written encompass seeds that can occur in nature. The Examiner thus has suggested amending the claims to recite that the seeds comprise the construct that was introduced into the parent plant.

In response, without conceding the correctness of the Examiner's position, but to expedite allowance of the subject application, Applicants have amended claim 48 in accordance with the Examiner's suggestion. As noted above, claim 65 has been canceled, thus rendering its rejection moot. Applicants therefore respectfully request reconsideration and withdrawal of the rejection of claims 48 and 65 under 35 U.S.C. §101.

Subject matter the Examiner has deemed to be allowable

The Examiner stated that claims 1-26, and 42-59 are deemed free of the prior art. The Examiner has further stated that claims 2-18, 20-21, 23, 25-26, 43-44, 46-47, and 50-57 are allowable.

In response, Applicants acknowledge and appreciate the allowance of the above-identified subject matter.

In view of the above remarks and amendments, Applicants believe that all of the Examiner's rejections and objections set forth in the February 24, 2006 Office Action have been fully overcome and that the present application is in condition for allowance. The Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

No fee is believed due in connection with the filing of this Amendment. If, however, any fee is deemed necessary, authorization is hereby given to charge such fee, or credit any overpayment, to Deposit Account 02-2135.

Respectfully submitted,

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By



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